

County Issues Workgroup

CONSENSUS ITEM

ITEM NO: 6 Version Date: November 26, 2001

ITEM TITLE: Uses and Disclosures of PHI by Multidisciplinary Teams that are Part of a California Integrated Children's Services Program

Premise

County programs that are part of a California Integrated Children's Services Program utilize multidisciplinary teams (MDT's). These teams may include members that are outside the healthcare component of the county hybrid entity and whose purposes extend beyond treatment, payment, and healthcare operations (TPO). The HIPAA Privacy Rule allows sharing of protected health information (PHI) among the members of these teams provided the team has obtained a valid written authorization that gives a knowing and informed consent.

Reasoning

The California Welfare and Institutions Code (WIC), §§18986.40 and 18986.46, provides for the establishment of integrated children's services programs. The law requires these programs to utilize multidisciplinary teams to provide a full range of integrated behavioral, social, health, and mental health services. Programs that operate under these statutes are authorized to maintain a **unified services record** and to share information between members of the team provided an authorization has been secured. Further, §18986.46 vests authority in the courts to authorize this exchange for children under the courts' jurisdiction.

MDTs may include representatives of such non-healthcare component agencies as probation, police, the courts, schools, etc. An example use of MDTs is Children's System of Care as authorized by the WIC, §§ 5698 & 5699.

Multidisciplinary team members must be trained and qualified to provide integrated services. These are detailed in Subdivision (a) of WIC §18986.40. Services provided by MDT's may include health care and mental health diagnostic and treatment services, not unlike those provided to individuals by covered entities and/or health care components of hybrid entities.

§164.508 of HIPAA regulation text details the uses and disclosures of protected health information for which an authorization is required. Furthermore, required core elements of a valid authorization are detailed in part (c)(1) of this section. Part (c)(2) goes on to require that the authorization must be written in plain language. Since PHI may be disclosed for purposes other than TPO in the MDT context, an authorization must be obtained from the patient or his/her representative in accordance with §164.508(a). Authorizations must meet the requirements of §164.508(c) to be valid.

Subdivision (e) of WIC §18986.46 requires a single written authorization that gives a knowing and informed consent and that complies with all other provisions of state law

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governing release of medical, mental health, and other types of records. California law does not specify the elements that are necessary for an authorization to be valid, but instead focuses on the conditions for disclosure and those persons qualified to receive information.

WIC § 18986.46 (d) states in regard to the **unified services record**, "That record shall contain all records of prior services that are released to the program (integrated children services) and that are relevant and necessary to formulate an integrated services plan, pursuant to valid written authorizations, as well as a record of all services provided under the program."

Note: Any use of psychotherapy notes, as distinct and separate from mental health or medical patient records, must be separately authorized (HIPAA regulation text, §164.508 (a)(2)). This appears to override WIC §18986.46, subdivision (3) that requires use of a single authorization.

Thus current consent and authorization practice under the WIC appears consistent with the HIPAA requirement for identifying disclosed information in a specific and meaningful fashion on the written authorization.

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Implications

Multidisciplinary teams which include members outside the healthcare component of the county hybrid entity, such as those called for in the WIC §§ 5698, 5699, 18986.40, and 18986.46, can operate in compliance with the requirements of HIPAA. Any sharing of PHI in this setting will require an authorization that meets the requirements of the Final Privacy Rule §164.508. Authorization forms should be subjected to legal review to ensure that they meet the requirements of the Privacy Rule and California law. The Privacy Rule will govern the validity of the authorization with the exception of any requirements in California law, which are determined to be more stringent than corresponding requirements in the Privacy Rule. The HIPAA requirement that information to be used or disclosed be identified in a specific and meaningful fashion will be interpreted as it is in current practice under the WIC provisions for MDTs.

Assuming that the appropriate authorization has been obtained, no accounting of disclosures made in the context of the MDT is required (§164.502(a)(1)(iv)).

A copy of the authorization must be retained for at least six years from its date of creation or the date when it was last in effect, whichever is later.

The MDT should ensure that team members who are not part of the healthcare component of the county hybrid entity are fully trained in how to treat PHI.

ITEM CHRONOLOGY

Workgroup Draft: 10/01/2001 Workgroup Approved: 11/26/2001

Approved Revisions: _____, _____, _____

SUPPLEMENTAL MATERIALS

Links to supporting legal and content expert opinions.